IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

WEDNESDAY, THE 20TH DECEMBER 2006 / 29TH AGRAHAYANA 1928

CRP.No. 630 of 2005()

AGAINST THE ORDER DATED 22/02/2005 IN IA.2114/2003 IN
OS.85/1989 of SUB COURT, MANJERI)

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REVN. PETITIONERS/RESPONDENTS 1 TO 10 TO 12/DEFENDANTS 1 & 10 TO 12.:

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1. KARTHIAYANI AMMA, W/O.VAZHANGALIL NARAYANAN EZHUTHASSAN, EDAPATTA, PERINTHALMANNA TALUK, MALAPPURAM DISTRICT.

2. P.V.SHEELA, D/O.KARTHIAYANI AMMA, DO.

3. P.V.SATHIAN, S/O. DO.

4. P.V.SOBHA, D/O. DO.

BY ADV. SRI.T.KRISHNAN UNNI

RESPONDENTS/PETITIONERS & RESPONDENTS 2 TO 9 AND 13 TO 18/
PLAINTIFFS AND DEFENDANTS 2 TO 9 AND 13 TO 18:

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1. P.V.AYYAPPAN EZHUTHASSAN, S/O.VAZHANGALIL NARAYANAN EZHUTHASSAN, KARUVASSERI DESOM, VENGERI AMSOM, KOZHIKODE TALUK, KOZHIKODE DISTRICT.

2. M.RAJESWARI, W/O.AYYAPPAN EZHUTHASSAN, DO. DO.

3. PRADEEP, S/O.AYYAPPAN EZHUTHASSAN, DO. DO.

4. PRAMEELA, D/O.AYYAPPAN EZHUTHASSAN, DO. DO.

5. PREETHI, D/O.AYYAPPAN EZHUTHASSAN, DO. DO.

6. P.V.JANAKI, D/O.NARAYANAN EZHUTHASSAN, KALATHINGAL HOUSE, MANKADA, MALAPPURAM DISTRICT.

7. P.V.KRISHNAN, S/O.VAZHANGALIL NARAYANAN EZHUTHASSAN, P.O.MELATTUR, MALAPPURAM DISTRICT.

8. P.V.SANTHAKUMARI, S/O.VAZHANGALIL NARAYANAN EZHUTHASSAN, ODUNATTUTHODI HOUSE, P.O.KARUVARAKUNDU, MALAPPURAM DISTRICT.

9. P.V.DEVAKI, D/O.VAZHANGALIL NARAYANAN EZHUTHASSAN, EDAYATTOOR, P.O.MELATHUR, MALAPPURAM DISTRICT.

10. P.V.BHARATHI, D/O.VAZHANGALIL NARAYANAN EZHUTHASSAN, PUTHANVEETTIL HOUSE, P.O.EDAPPATTA, MALAPPURAM DISTRICT.

11. P.V.SANKARA NARAYANAN, S/O.VAZHANGALIL NARAYANAN EZHUTHASSAN, P.O.MELATHUR, MALAPPURAM DISTRICT.

12. P.V.RAMADASAN, S/O.VAZHANGALIL NARAYANAN EZHUTHASSAN, DO. DO.

13. P.V.BABURAJAN, S/O.VAZHANGALIL NARAYANAN EZHUTHASSAN, EDAPATTA P.O., MALAPPURAM DISTRICT.

14. BALAMANI, W/O.P.V.KRISHNAN, P.O.MELATHUR, MALAPPURAM DISTRICT.

15. ANIL, S/O.P.B.KRISHNAN, PO MELATHUR, MALAPPURAM DISTRICT.

16. PREMAKUMARI, W/O.P.V.SANKARA NARAYANAN, P.O.MELATHUR, MALAPPURAM DISTRICT.

17. DHANYA, D/O.P.V.SANKARA NARAYANAN P.O.MELATHUR, MALAPPURAM DISTRICT.

18. USHA, W/O.P.V.RAMADASAN, DO. DO.

19. DEEPAK, S/O.P.V.RAMADASAN, DO. DO.

BY ADV. SRI.K.M.SATHYANATHA MENON-R1 TO R4
SRI.DEVIDAS.U.K-R13

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 20/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

C.R.P.630 OF 2005

DATED THIS THE 20th DAY OF DECEMBER, 2006

ORDER

A preliminary decree for partition was passed by Sub Court, Manjeri in O.S.85/89 finding that plaint A to C schedule properties are available for partition and fixing the shares. Item No.1 of Plaint schedule properties is found to be a coparcenary property and item. No.2 to 5 are found to be self acquired properties. I.A.2114/03 was filed by plaintiffs, subsequently under Section 152 of C.P.C. to amend the decree contending that clerical/acciddental mistake/error occurred in the judgment with regard to item No.1 of the plaint schedule properties. It was contended that under the preliminary decree and judgment, it was found that sons born after 1956 are not entitled to a share in item No.1 of plaint schedule properties but defendants 8 and 9, who were born subsequent to 1956, were given shares and that mistake is to be corrected. Under the impugned order dated 22.2.05. learned Sub Judge allowed the application. That order is challenged in this petition filed under Section 115 of Code of Civil Procedure.

3. Learned Counsel appearing for petitioners and respondents were heard.

4. Arguments of learned Counsel appearing for petitioners is that the impugned order is unsustainable as the mistake in the judgment was not with regard to the shares alloted to defendants 8 and 9 instead the mistake was on referring Hindu Succession Act 1956 instead of Kerala Hindu Joint Family Abolition Act 1976. It was argued that till the coming into force of Kerala Hindu Joint Family Abolition Act, male children born in the coparcenary family are entitled to share and learned Sub Judge by mistake referred Hindu Succession Act 1956 instead of Kerala Hindu Joint Family Abolition Act and therefore the order is unsustainable.

5. Learned Counsel appearing for respondents plaintiffs vehemently argued that in view of the specific finding in the judgment that sons born after 1956 are not entitled to a share in item No.1 of the plaint schedule property, the shares granted to defendants 8 and 9 are either clerical or accidental error and under the impugned order that was corrected and defendants 8 and 9 have not challenged that order and therefore the revision is only to be dismissed. It was also argued that even if there is a mistake in the decree and judgment, the remedy is only to file an appeal and petitioners are not entitled to get the decree corrected without filing an appeal, by challenging the impugned order.

6. On hearing learned Counsel appearing for petitioners and respondents, it is clear that learned Sub Judge has not properly

considered I.A.2114/06 while passing the impugned order. Learned Sub Judge presumed that the reference made in the judgment is with regard to Hindu Succession Act and therefore a mistake has crept in. The commencement of Hindu Succession Act does not make any difference with regard to the shares of the coparcenay property.

7. As rightly pointed out by learned Counsel appearing for petitioners, till the date of commencement of Kerala Hindu Joint Family Abolition Act, male children born in the coparcenary family are entitled to get a share by birth. If that be the case, learned Sub Judge has to see whether the mistake in the judgment is with regard to the reference of Hindu Succession Act on omission to mention Joint Hindu Family Abolition Act and on the shares granted to defendants 8 and 9 as canvassed by parties.

The impugned order is set aside. Learned Sub Judge is directed to consider the objection raised by petitioners herein and dispose I.A.2114/03 afresh. Learned Sub Judge to dispose the application as expeditiously as possible and at any rate within six months from the date of receipt of a copy of this judgment.

M.SASIDHARAN NAMBIAR,JUDGE

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